

MANKO | GOLD | KATCHER | FOX LLP

AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

Robert D. Fox
484-430-2312
rfox@mankogold.com

Admitted in PA

401 CITY AVENUE, SUITE 901
BALA CYNWYD, PA 19004
TEL: 484-430-5700
FAX: 484-430-5711
WWW.MANKOGOLD.COM

PHILADELPHIA, PA
*CHERRY HILL, NJ
WILLIAMSPORT, PA
by appointment only

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Via Certified Mail, Return Receipt Requested
and Electronic Mail [r6 San Jacinto Waste Pits Comments@epa.gov](mailto:r6_San_Jacinto_Waste_Pits_Comments@epa.gov)

**Partner responsible - Bruce S. Katcher*

Gary Miller, Remedial Project Manager
United States Environmental Protection Agency (EPA)
Region 6 (6SF-RA)
1445 Ross Avenue
Dallas, TX 75202-2733

Re: Comments on Proposed Remedial Action Plan for the San Jacinto River Waste
Pits Superfund Site, Harris County, Texas

Dear Mr. Miller:

I am writing on behalf of McGinnes Industrial Maintenance Corporation ("MIMC") with respect to the San Jacinto River Waste Pits Superfund Site (the "Site"). On January 11 and 12, 2017, during the public comment period, MIMC submitted comments to the United States Environmental Protection Agency ("USEPA") on the Proposed Remedial Action Plan (the "Plan") for the Site. MIMC's comments identified scientific, regulatory, legal, procedural and policy concerns related to EPA's proposed remedy selection. One principal concern addressed by the comments was EPA's assertion in the Plan that the existing cap, which was constructed as part of the time critical removal action based on a design developed at USEPA's direction and approved by USEPA (the "TCRA Cap") for the Site, would not be protective against hypothetical future storm events even with cap enhancements endorsed by the United States Army Corps of Engineers ("Corps"). Based in large part on that rationale, USEPA rejected a capping remedy developed by the Corps (referred to by USEPA as "Alternative 3aN") that included the Corps' endorsed enhancements to the TCRA cap ("Alternative 3aN Armored Cap"). USEPA instead proposed removal of the existing, functioning TCRA Cap as well as the underlying waste, despite the Corps' prediction of substantially greater risks of releases to the San Jacinto River resulting from such waste excavation and dredging activities.

After the public comment period ended, the San Jacinto area experienced an intense 1000 year -storm in the form of Hurricane Harvey. Initial inspection of the capped waste pits after Hurricane Harvey indicate that despite EPA's assertions in the Plan, the TCRA Cap withstood an intense storm with only minor repairs necessary (less than 1% of the cap area), repairs that are expressly within the USEPA-approved design specifications for the cap, which contemplated



repairs of up to 5% of the cap area. In fact, USEPA's Hurricane Harvey update dated September 18, 2017 stated that initial sampling data indicate that post-Harvey surface water and sediment sampling results are consistent with conditions prior to the Hurricane. Additional samples were taken by USEPA and splits of those samples were taken by Respondents. Validated sampling results are expected shortly.

Given the centrality to USEPA's remedy selection for the Northern Impoundments of the potential impacts of an intense storm such as Hurricane Harvey on the existing and enhanced cap, it is imperative that USEPA consider post-Harvey results and evaluation as part of USEPA's final remedy selection. To that end, MIMC intends to submit within the next two (2) weeks additional material information which MIMC respectfully requests be included in the administrative record and be considered in any remedy selection, and will include:

1. The validated post-Harvey sampling results;
2. A report on post-Harvey inspections of the TCRA Cap;
3. A report on the performance of the existing TCRA Cap under the conditions created by Hurricane Harvey that will address whether the cap maintenance issues identified following Hurricane Harvey would occur if the the Alternative 3aN Armored Cap were in place;
4. A report on geomorphology issues in light of Hurricane Harvey, including an analysis of whether any concerns related to river geomorphology would be addressed if the Alternative 3aN Armored Cap were in place; and
5. Updated modeling regarding the performance of the Alternative 3aN Armored Cap using available information obtained from the Corps.

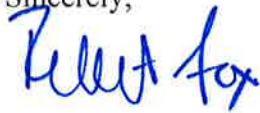
The sampling data and the information contained in these reports is not only highly relevant to the central issue identified above, but it is also consistent with the Superfund Task Force Recommendations issued on July 25, 2017, after close of the public comment period. The recommendations of the Task Force, among other things, support the use of sound science and an adaptive management approach at complex sites, including early actions that are consistent with and not contrary to the ultimate remedy selection. Removal of the TCRA Cap, designed and constructed at USEPA's direction, would be inconsistent with those principles as well as CERCLA §104(a)(2) and EPA's existing removal action guidance (i.e., Superfund Removal Guidance for Preparing Action Memoranda, Office of Emergency Management, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, Washington, D.C., September 2009).

Finally, as pointed out by EPA Region 6 in a letter to MIMC counsel dated January 6, 2017, pursuant to 40 CFR section 300.825(c), EPA is "required to consider comments submitted by interested persons after the close of the public comment period only to the extent that the

comments contain significant information not contained elsewhere in the administrative record file which could not have been submitted during the public comment period and which substantially support the need to significantly alter the response action." The above data and reports clearly meet that standard. They contain highly significant information materially supportive of fundamentally altering the remedy selection. Most of the data became available only after Hurricane Harvey, an event which occurred after the close of the public comment period. The rest of the information is being submitted to address modeling input data obtained from the Corps after the close of the public comment period and USEPA's rejection of Respondents' request for a timely technical meeting with Corps' representatives to better understand the Corps' modeling. None of the information is contained elsewhere in the administrative record.

MIMC appreciates your consideration of this new, upcoming information and welcomes the opportunity to discuss the impact of this information on remedy selection.

Sincerely,



Robert D. Fox
For MANKO, GOLD, KATCHER & FOX, LLP

RDF/kl

cc: The Honorable Scott Pruitt, Administrator, EPA Headquarters
Albert Kelly, Senior Advisor, EPA Headquarters
James E. Woolford, EPA Headquarters
Dana Stalcup, EPA Headquarters
Samuel J. Coleman, EPA Region 6
Carl E. Edlund, EPA Region 6
Carlos Sanchez, EPA Region 6
Anne Foster, EPA Region 6
David Keith, Anchor QEA
John F. Cermak, Jr., Esquire, Baker Hostetler
Sonja A. Inglin, Esquire, Baker Hostetler